

EX PARTE OR LATE FILED

ORIGINAL

O'CONNOR & HANNAN, L.L.P.

ATTORNEYS AT LAW

SUITE 800  
1919 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, D.C. 20006-3483  
(202) 887-1400  
FAX (202) 466-2198

Audrey P. Rasmussen  
Direct Dial (202) 887-1431

MINNEAPOLIS OFFICE  
708 SOUTH SECOND AVENUE  
700 BAKER BUILDING  
MINNEAPOLIS, MN 55402  
(612) 341-3800  
FAX (612) 343-1256

MADRID OFFICE  
LA RINCONADA 6 3°  
28023 MADRID, SPAIN  
(011) 341 575 0944  
(011) 341 357 2251  
FAX (011) 341 577-0759

September 6, 1996

RECEIVED

SEP 6 - 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

William F. Caton  
Acting Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Re: Ex Parte Communication in  
929 MHz Nationwide Exclusivity,  
WT Docket No. 96-18, PP Docket No. 93-253

Dear Mr. Caton:

Pursuant to Section 1.1206(a)(2) of the Commission's rules, we are filing an original and one copy of this letter to report an Ex Parte communication in the above-referenced proceeding.

Two representative of PageMart II, Inc. ("PageMart") and its counsel met on September 5, 1996 with Suzanne Toller, Legal Advisor to FCC Commissioner Chong, and in separate meetings with Michele Farquhar, Chief of the Wireless Telecommunications Bureau, as well as with Tim Peterson, Advisor to the Chief of the Common Carrier Bureau, to introduce themselves. In these brief meetings, PageMart discussed its frequency on 929.7625 MHz which had been coordinated, applied for and built as a nationwide frequency for PageMart prior to the February 9, 1996 Notice of Proposed Rulemaking, WT Docket No. 96-18, PP Docket 93-253, FCC 96-52. Yet when the PCP nationwide exclusivity frequency Public Notice, DA 96-748, was released on May 10, 1996, the frequency 929.7625 MHz was not on the list as being a nationwide exclusive frequency for PageMart. All matters discussed were contained in PageMart's Petition for Reconsideration filed June 5, 1996 and its Motion for Stay filed on June 17, 1996 in the above-referenced proceeding. In these pleadings, PageMart submitted that it should have been extended nationwide exclusivity since it had been coordinated and had filed the requisite number of applications with the FCC to perfect the exclusivity claim, based on FCC Rules and precedent. PageMart also raised its legal arguments concerning its reliance on an FCC existing frequency exclusivity scheme, retroactive application of the FCC's proposed rules and

CH


William Caton, Acting Secretary  
September 6, 1996  
Page 2

the lack of notice by the FCC to PageMart regarding this nationwide exclusive frequency. PageMart also distributed the enclosed fact sheet on the company.

It is requested that this letter be included in the record in the above proceeding. If there are any questions in connection with this matter, please give us a call.

Very truly yours,

**PAGEMART II, INC.**

By:   
Audrey P. Rasmussen  
Its Attorney

APR/trs  
Enclosure  
cc: Suzanne Toller (w/enc.)  
Michele Farquhar (w/enc.)  
Timothy Peterson (w/enc.)



---

## **PAGEMART II, INC.**

**929.7625 MHz**

### **ABOUT THE COMPANY:**

- PageMart is a provider of nationwide wireless messaging services headquartered in Dallas, Texas. PageMart currently employs over 1,000 employees in Texas and provides service to over 1.5 million subscribers across the United States.

### **BACKGROUND FACTS:**

- PageMart filed over 400 transmitter site applications by March 15, 1994, at which time PageMart requested coordination by NABER of a nationwide exclusive paging frequency.
- In May, 1994 PageMart's applications were filed with the FCC as coordinated on 929.7625.
- As of December 1, 1994, 929.7625 was included on PCIA's 929 Exclusivity Master List. The FCC began granting licenses to PageMart on 929.7625 in December 1994, and PageMart began construction of its network on the frequency.
- In October, 1994 Electronic Engineering Company filed a Petition to Dismiss with the FCC challenging PageMart's nationwide exclusivity on 929.7625. On June 1, 1995 the FCC denied the Petition to Dismiss and upheld PageMart's nationwide exclusivity on 929.7625.
- Consistent with its business plan, PageMart continued to build out the 929.7625 frequency in compliance with the requirements of the construction permits. FCC rules provided for a final grant of nationwide exclusivity upon construction and operation of 300 sites.
- On February 9, 1996, the FCC released its Notice of Proposed Rulemaking effectively taking away PageMart's nationwide exclusivity on 929.7625 without notice. PageMart had been waiting for the Public Notice announcing nationwide exclusivity which the FCC had stated it would release. Contrary to existing FCC rules, the NPRM purported to strip PageMart of its ability to complete its construction of the 929.7625 nationwide frequency.
- On May 10, 1996 the FCC released a Public Notice listing those frequencies that had qualified for nationwide exclusivity and thus would be exempt from the paging freeze and geographic licensing. PageMart's previously coordinated 929.7625 MHz was not on the list.

- On May 15, 1996, PageMart filed a notice with the FCC that it had constructed and was broadcasting on 364 transmitters.

#### **PAGEMART'S POSITION:**

- PageMart's 929.7625 MHz is in a state of "Regulatory Limbo".
- In reliance on the existing PCP rules PageMart developed a business plan for the construction of a nationwide network on 929.7625. The Company filed applications, constructed and is now operating on a total of 364 sites.
- The NPRM and the First Report and Order released April 23, 1996, equate to an unconstitutional taking of PageMart's nationwide exclusivity without due process of law. Without notice, the FCC changed the existing rules without providing even a reasonable time for PageMart to complete construction.
- Previously, qualified holders of exclusive licenses were given eight months to construct each transmitter site. Had PageMart even been given as few as thirty (30) days from February 9, 1996 to complete construction, it could have notified the FCC of its completion of the 929.7625 system.
- As a result of the NPRM and the First R & O, PageMart's nationwide frequency is subject to erosion at the hands of incumbent licenses who may be permitted to expand their networks on 929.7625 where they were previously prohibited.
- PageMart has had to withdraw all additional applications on 929.7625 filed with PCIA in order to avoid the risk that other licensees, competitors or speculators would file competing applications and thereby force PageMart into an auction situation.
- Effectively, the rulemakings require PageMart to purchase what they had already earned under existing FCC rules.
- PageMart will be irreparably harmed if 929.7625 is not accorded nationwide exclusivity as its long-term spectrum utilization plan will not have the capacity required to meet increasing consumer demand.

#### **SOLUTION:**

- Confirmation of award of nationwide exclusivity to PageMart as of February 8, 1996.